

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.761 OF 2004
WITH
CIVIL APPLICATION NO.1032 OF 2004

Suman Namdeo Choudhary & Ors. ..Appellants.

Vs.

Municipal Corporation of
Greater Mumbai ..Respondent.

....

Mr.Suresh Gole for the Appellants.

Ms.Geetanjali Joglekar for the BMC.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

12th December, 2005.

P.C. :

1. Counsel appearing for the Appellants has fairly drawn the attention of the Court to the fact that the Appellants were Plaintiffs before the City Civil Court in a batch of suits that was disposed

of on 18th December, 2003. These suits sought to question the action proposed by the Municipal Corporation of removing the Plaintiffs from the footpath under Tilak Bridge, Senapati Bapat Marg, Dadar, Mumbai 400 028. The Appellants are hawkers carrying on the business of vegetable vendors. While dismissing the suit, the Learned Trial Judge observed thus :

"The foregoing discussion will indicate, the Corporation was constrained to call upon the Plaintiffs to remove themselves from their existing site as fly over Keshav Sut bridge having come into existence, the traffic flow from said flyover needs to be regulated. The traffic has been diverted to this road and has been getting congested due to unauthorized squatting immediately below Tilak Bridge including Plaintiff. The width of the road as indicated by the Plaintiff in evidence is 40' x 50' , the same is accepted by Mr.Thorat for Corporation. In such width of the road smooth flow of traffic without any obstruction to pedestrian with high speed

vehicles is herculian task. In order to have safety of the pedestrian the Corporation's move to shift the present Plaintiffs to the convenient place and as per policy formulated to the consolidate place will have to be seen from this angle."

Accordingly, the suits were dismissed. The Municipal Corporation was, however, granted liberty to consider the proposal of the Plaintiffs to shift them below the Keshav Sut Bridge in its first opening in accordance with the rules and regulations of the Municipal Corporation. If that was not permissible under the policy of the Corporation, the Trial Court directed that the Corporation will be at liberty to consider the proposal of the Plaintiffs for shifting them from the existing site to either the footpath existing on the opposite side of the Plaintiffs' stalls or within the periphery of 500 mtrs. in accordance with the rules and regulations. The stalls of the Plaintiffs were demolished upon which L.C. Suit No.906 of 2004 came to be instituted. At the hearing of the Motion, a statement was made on

behalf of the Municipal Corporation that the place below the Keshav Sut Bridge has been declared as a non-hawking zone and since the hawkers therein had already been issued a notice, the Plaintiffs could not be shifted there. Similarly, the footpath opposite the Plaintiffs stalls is used for pedestrian traffic coming out of the Dadar station. The Learned Trial Judge was, therefore correct in observing that these two places could not be allotted to the Plaintiffs. The Learned Trial Judge was of the view that there was no breach of the previous order of the Trial Court.

2. The Supreme Court is seized of the issue relating to the framing of a scheme for hawkers in Greater Mumbai, in pursuance of the judgment delivered in Maharashtra Ekta Hawkers Union vs. Municipal Corporation, Greater Mumbai (2004) 1 SCC 625. On 30th July, 2004, the Supreme Court has issued directions in Civil Appeals 4156 and 4157 of 2002 in the following terms :

"We were also informed that one other party had also obtained order from some other Court in Mumbai. We, therefore, feel it

necessary to clarify that this Court is framing a scheme for hawking. Thus, only this Court will hereinafter deal with this aspect. No other Court shall either interpret Orders of this Court or pass any Order contrary to the Orders of this Court. If any clarifications are required they must be obtained from this Court. And if any party feels aggrieved by the effect of an Order of this Court, then the remedy of that party will be to approach this Court for a clarification or variation."

3. The Supreme Court has, therefore, specifically directed that the Court is in the process of framing a scheme for hawking. Only the Supreme Court can hereinafter deal with the aspect and no other Court shall interpret the orders of the Supreme Court or pass any orders contrary to the orders that have already been passed. Any clarification that is required must be obtained from the Supreme Court. Counsel appearing for the Appellants states that the Appellants have since moved the Supreme Court for clarification. It would not be appropriate for this Court, contrary

to the directions of the Supreme Court, to entertain this Appeal. This Appeal is accordingly disposed of.

4. Counsel appearing for the Appellants applies for stay. Granting of any stay will be directly in the teeth of the directions issued by the Supreme Court. Hence, the application for stay rejected.

5. In view of the disposal of the Appeal from Order, the Civil Application is rendered infructuous and is accordingly disposed of.